

United States District Court Southern District of Texas

Case Number: 05CV1847

ATTACHMENT

Description:

☐ State Court Record ☒ State Court Record Continued

☐ Administrative Record

☒ Document continued - Part 16 of _____

☐ Exhibit to: _____
number(s) / letter(s) _____

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1 CAUSE NO. 9403201

2 STATE OF TEXAS IN THE 178TH DISTRICT COURT
3 VS. OF
4 GERALD CORNELIUS ELDRIDGE HARRIS COUNTY, TEXAS
5

6 A P P E A R A N C E S:

7 For the State: Ms. Ela Alcala
8 Mr. Don Smyth
Assistant District Attorneys
Harris County, Texas

9 For the Defendant: Ms. Danice Crawford
10 Mr. Wayne Hill
Attorneys at Law
11 Houston, Texas
12

13 BE IT REMEMBERED that upon this the
14 1st day of March A.D. 1994, the above entitled
15 and numbered cause came on for contested
16 competency hearing before the Honorable William
17 T. Harmon, Judge of the 178th District Court of
18 Harris County, Texas, and a jury; and the State
19 appearing by counsel and the Defendant appearing
20 in person and by counsel, the following
21 proceedings were had, viz:
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25

1 MS. CRAWFORD: At this time, if it
2 please the court, Your Honor, just for the
3 purpose of the record, yesterday, Mr. Hill, on
4 behalf of the defendant, had raised a specific
5 objection to a specific juror, and we wanted to
6 place this on the record before the entire jury
7 has been sworn in with respect to our objection
8 to the panel as a whole. Initially we had not
9 objected but that was before Ms. Nguyen had
10 expressed her concerns regarding her language
11 deficiencies. At any rate, Your Honor, again,
12 basically, it's the same objection that Mr. Hill
13 raised. We object to the panel with respect to
14 juror Ms. Nguyen under Art. 35.16, basically
15 Sec. No. 11, her inability to serve as a
16 competent juror because of her inability to read
17 or write the English language.

18 THE COURT: Overruled. Juror will be
19 seated. Ready for the jury.

20 (Jury enters the courtroom).

21 THE COURT: Good morning.

22 Why don't you have a seat, doctor.

23 Obviously, this is totally inadequate,
24 in my opinion, as a facility to serve as a
25 courtroom. We've done our very best to try to

1 find a real courtroom with a jury box, with a
2 witness stand that has a microphone, as this one
3 does not. All these witnesses are going to be
4 advised by me to please keep their voices up;
5 however, due to the proximity of these
6 witnesses, I don't think anybody should have any
7 difficulty hearing what they have to say. This
8 is one of the reasons why we need a new
9 courthouse, just not enough space every day to
10 conduct everything that needs to be going on. I
11 am sorry I made you all wait; but, obviously,
12 I've done everything I could to try to avoid
13 this from having to happen, and it was
14 unavoidable, so we're going to go ahead and get
15 started. We're continuing to look for a
16 courtroom that does have a real jury box where
17 you all will not have to sit in such close
18 proximity and a real jury room that you all can
19 use; however, since this trial really is not
20 going to last that long, we're going to go ahead
21 and get started today. As soon as those
22 accommodations become available, we may move.
23 At any rate, appreciate your understanding.

24 If you all will please rise, raise
25 your right hands, my clerk will now administer

1 to you all the oath of a jury.

2 (Oath administered to all jurors by
3 the clerk).

4 THE COURT: Please be seated.

5 Ms. Crawford, do you wish to make an
6 opening statement?

7 MS. CRAWFORD: No, Your Honor, we
8 waive our right to make an opening statement.

9 THE COURT: Call your first witness.

10 MS. CRAWFORD: If it please the court,
11 we call Dr. Richard Austin.

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RICHARD B. AUSTIN, JR.

was called as a witness by the Defense and,
having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. CRAWFORD:

Q. Sir, would you, please, state your
name for the purpose of the record many?

A. Doctor Richard B. Austin, Jr.

Q. And, Doctor Austin, are you a resident
of the Harris County area?

A. Yes, I am.

Q. And what is your profession, sir?

A. I'm a clinical psychologist, licensed
in the State of Texas.

Q. Would you briefly give your
credentials and qualifications that enable you
to be titled a clinical psychologist?

A. Yes. I received education and
training in a four-year program at University of
Texas in Austin, Texas, and a year in Southwest
Medical School in division of psychology,
completed my clinical internship, plus I served
in a community psychiatric clinic in Corpus,
received three years post-doctoral supervision.

Q. And when was that, Doctor Austin?

1 A. In the early 1960's was my
2 post-doctoral. I completed my Ph.D. in 1960.

3 Q. And, since that time, have you
4 practiced as a clinical psychologist?

5 A. Yes, I have.

6 Q. How many years have you maintained
7 that profession?

8 A. Over thirty years.

9 Q. And in your duties as a clinical
10 psychologist, what specifically do they entail?

11 A. Diagnosis and treatment of mental and
12 emotional illnesses.

13 Q. And do you have a particular type of
14 patient that you render your service on, or do
15 you generally --

16 A. My training is with both children,
17 adolescents as well as adults, and I work
18 extensively with families.

19 Q. Okay. Doctor Austin, have you had the
20 opportunity to perform any forensic duties?

21 A. Yes.

22 Q. Backing up, what does that mean?

23 A. Forensic duties has to do with
24 applying your psychological knowledge and
25 training to issues involving the court system,

1 litigation.

2 Q. And have those occasions been few or
3 many?

4 A. They have been many for the last five
5 years.

6 Q. And have you, based on those
7 examinations, formed opinions as to the
8 psychological status of patients?

9 A. Yes.

10 Q. And have those occasions been few or
11 many?

12 A. Many.

13 MS. CRAWFORD: Your Honor, at this
14 time, we ask that Doctor Austin be established
15 as an expert in the area of psychology.

16 THE COURT: You may proceed.

17 MS. CRAWFORD: All right.

18 Q. Doctor Austin, at some point, did you
19 receive or make contact with me?

20 A. Yes.

21 Q. And do you recall when that was?

22 A. It was approximately six months ago.

23 Q. And based on our communication, what
24 happened?

25 A. You asked me to assess Gerald Eldridge.

1 Q. And do you see Gerald Eldridge here in
2 the courtroom today?

3 A. Yes.

4 Q. Could you, sir, point him out,
5 identifying some article of clothing he is
6 wearing?

7 A. He's directly to your right.

8 MS. CRAWFORD: Your Honor, may the
9 record reflect that the witness has identified
10 the defendant?

11 THE COURT: Yes, ma'am.

12 MS. CRAWFORD: Thank you, sir.

13 Q. What was it that I asked of you, sir?

14 A. You asked me to conduct a
15 psychological evaluation of Mr. Eldridge.

16 Q. Okay. And in doing that,
17 specifically, what does the job entail?

18 A. The job entails interviewing,
19 observations and psychological testing.

20 Q. And ultimately were you able to
21 perform those duties on Mr. Eldridge?

22 A. No, I was not able to perform all
23 those duties on Mr. Eldridge.

24 Q. Okay. Did you at least attempt to do
25 so?

1 A. Yes, I did attempt to do that on
2 February 16th, 1994.

3 Q. Where were you when you made that
4 attempt?

5 A. It was in the Harris County jail.

6 Q. All right. What exactly did you do in
7 preparation leading up to the actual interview,
8 I guess, with the patient?

9 A. Aside from a general history, I
10 attempted to put the patient at ease and
11 attempted to proceed with psychological testing
12 as well as interviewing.

13 Q. And approximately how long or how much
14 time did you spend with the patient?

15 A. I spent approximately an hour with the
16 patient altogether.

17 Q. Did you have the opportunity to make
18 an observation prior to coming in direct contact
19 with the patient?

20 A. No.

21 Q. And the facility that you were at, I
22 believe you testified, was the jail; is that
23 correct?

24 A. Yes.

25 Q. Where exactly in the jail were you all?

1 A. Harris County jail, which is
2 practically next door.

3 Q. Okay. Was it on a particular unit or
4 in a particular area?

5 A. Yes. It was like the sixth floor.

6 Q. Okay.

7 A. In a lock-up.

8 Q. Okay. Could you tell us, Doctor
9 Austin, how the patient was examined, what was
10 the process that you went through.

11 A. Yes. I observed the patient going
12 into the room in sort of a glass partition where
13 I could see his behavior, observed him probably
14 before he saw me. Then I went into the room and
15 was able to attempt to converse with him at that
16 time.

17 Q. Okay. Let's start first with the
18 initial observations that you made when this
19 glass partition separated you all. What did you
20 observe at that time?

21 A. Patient's behavior happened to be one
22 where he was slumped over, he was mumbling to
23 himself inaudibly or, at least, seemed like he
24 was talking to himself before entering the room.

25 Q. And after you entered into the room,

1 what did you discover?

2 A. My overall observation was the patient
3 had trouble making eye contact with me in the
4 sense of the ordinary contact one would make
5 with somebody you are examining, even a
6 disturbed patient. That by his non-verbal
7 behavior, his lack of eye contact, his body
8 mannerisms, he appeared to be extremely detached
9 or withdrawn.

10 Q. Were you able to partake in any
11 conversation with the patient?

12 A. Only with great difficulty was I able
13 to converse with him at all. And I did not
14 perceive he was able to--

15 THE COURT: Y'all hold on.

16 MS. CRAWFORD: Excuse me, Your Honor.

17 THE COURT: Members of the jury, do me
18 a favor. If you would just file out the door,
19 have a seat out there in the hall, stand in the
20 hallway.

21 (The jury is removed from the
22 courtroom).

23 THE COURT: Let the record reflect
24 that Mr. Eldridge stood up and started walking
25 around and is crying a little bit. And I'm not

1 sure if the jury was aware of this, but I have
2 asked the jury to step outside in the hallway
3 while we resolve this situation.

4 Mr. Eldridge. Mr. Eldridge? All
5 right. I've called his name a couple of times.

6 THE WITNESS: He is not in good
7 contact. He is difficult to communicate with.
8 He is pretty decompensated.

9 THE DEFENDANT: It's too many people.
10 Too many people.

11 THE COURT: Too many people?

12 THE DEFENDANT: Too many people.

13 THE COURT: All right. Let me ask you
14 this. While this trial is going on, do you wish
15 to just remain in the holdover cell?

16 THE DEFENDANT: I don't know, I don't
17 know.

18 THE COURT: Mr. Eldridge.

19 THE DEFENDANT: I don't know.

20 THE COURT: Come here. Come here.

21 THE DEFENDANT: Don't put handcuffs on
22 me. Don't put handcuffs on me.

23 THE WITNESS: I would recommend that.

24 THE COURT: Mr. Eldridge?

25 THE WITNESS: I knew that was going to

1 happen. I told you.

2 THE COURT: Mr. Eldridge?

3 MR. HILL: Judge, if it please the
4 court, I understand the court is attempting to
5 make inquiry of Mr. Eldridge. Given the history
6 of psychological disorder that at least has been
7 brought to our attention through Doctor Austin,
8 and given the difficult task we have of trying
9 to protect against any waiver of his fifth
10 amendment privilege, since he doesn't appear to
11 be competent to waive it himself, I'm going to
12 have to ask the court not to make any inquiry or
13 any questions of the defendant. As he is in
14 open court, I don't want those to be perceived
15 as any type of admissions or any type of
16 statements that could be later used against him.

17 THE COURT: All right. Then I'll
18 allow you the choice to decide whether or not
19 Mr. Eldridge is going to remain in the courtroom
20 during the rest of the trial or to spend the
21 rest of the trial in the holdover. Obviously I
22 can't allow Mr. Eldridge to be a distraction or
23 disrupt the proceedings, so if you're of the
24 opinion he can sit here at counsel table without
25 disrupting or distracting the jury, then we will

1 proceed. If you do not feel as though that will
2 happen, then I'll instruct my process server to
3 put him in the holdover while we continue the
4 trial. Allow you to make the decision.

5 MR. HILL: Well, unfortunately, judge,
6 I don't know if I'm in any better position to
7 make that decision than the court is, given the
8 outburst that Mr. Eldridge engaged in.
9 Certainly would like him to be present for any
10 proceedings where his legal rights are in
11 jeopardy. I don't know. I don't know how to
12 predict whether or not he's going to calm down
13 or whether he is going to have another
14 outburst. I just don't know. I would like the
15 record to reflect he's mumbling as we stand in
16 front of you not more than a foot away from me.

17 THE COURT: Well, I certainly wouldn't
18 characterize what happened in front of the jury
19 as being an outburst. He simply got up, started
20 wandering toward the back of the room, and
21 certainly said nothing in my opinion that was
22 audible to the jury.

23 MR. HILL: He was making some sounds.
24 I didn't mean to characterize the outburst by
25 doing anything, just he stood up, started

1 walking around, making sounds, saying some words
2 that were inaudible to me.

3 THE COURT: You don't want me to make
4 inquiry of your client as to whether or not he
5 feels he can sit through the remainder of this
6 proceeding without making an outburst or
7 distraction?

8 MR. HILL: If the court perhaps can
9 instruct him. As to whether or not he
10 understands, I don't know. I don't want to turn
11 this into a potential fact-finding mission for
12 the State. He's already been examined by the
13 State experts. I'm just concerned about the
14 court making inquiry at this late stage.

15 THE COURT: Mr. Eldridge, you've been
16 to court before; haven't you?

17 THE DEFENDANT: If, if, if I'm right,
18 yes.

19 THE COURT: All right. Well, you've
20 been in front of a judge before; haven't you?

21 THE DEFENDANT: I don't know. I don't
22 know. Michael takes care of me. Michael, they
23 keep jumping on Michael. I am tired of them
24 jumping on Michael. I am tired, I am tired, I
25 am tired. I don't know.

1 THE COURT: Okay. I want the record
2 to reflect that Mr. Eldridge is not responding
3 to my inquiry, so I'm going to go ahead and
4 order the bailiff now to put Mr. Eldridge back
5 in the holding cell, and we'll continue the
6 hearing without Mr. Eldridge being present.

7 MR. HILL: Judge, could the record
8 also reflect, that as you were making inquiry of
9 Mr. Eldridge, he was responding? He may not
10 have been responsive to what you were asking,
11 but he was saying something that was inaudible.
12 He wasn't standing there --

13 THE COURT: What he was saying was
14 audible but not certainly in response to my
15 question.

16 MR. HILL: But he wasn't standing
17 silent in front of you, he was saying something.

18 THE COURT: Right. Let's go ahead and
19 let's do this. Let's get some help. Let's get
20 some help. Let's get some help. Put him out in
21 the waiting room. I tell you what. As soon as
22 he -- Freddy, go to the waiting room. Why don't
23 you bring the jury in.

24 MR. HILL: Judge, we would lodge an
25 objection to any effort by the court to remove

1 Mr. Eldridge from the courtroom. Would
2 constitute a denial of confrontation of the
3 witnesses ultimately that will be brought in to
4 testify against him. We feel that this would be
5 a violation both under the fifth, sixth, eighth,
6 fourteen amendments to the U. S. Constitution,
7 as well as the applicable statutory provisions
8 of the Texas Constitution, Art. 1, Sec. 9, Sec.
9 10 and 15 and 19 and, therefore, we would object
10 to any effort by the court to remove Mr.
11 Eldridge from the courtroom at this time.

12 THE COURT: I want the record to
13 reflect that it's apparent to the court that Mr.
14 Eldridge, for whatever reason, is not going to
15 be able to sit in this courtroom and observe and
16 be a participant in this proceeding without
17 distracting or disrupting the orderly
18 proceedings of the court. He, for whatever
19 reason, did not respond to my inquiry as to
20 whether or not he wished to remain in the
21 courtroom while the proceedings continue.
22 Therefore, the court has ordered the bailiff to
23 remove Mr. Eldridge from the courtroom because
24 the court is convinced that there is no reason
25 to believe that Mr. Eldridge would be able to

1 sit here and not distract or disrupt the jury in
2 any way. And the objection is overruled.

3 MR. SMYTH: Judge, I'd like the record
4 to reflect that Mr. Eldridge sat quietly through
5 the entire jury process yesterday and didn't do
6 anything at all, just sat there and didn't make
7 any disruption. It was not until the case
8 began, putting on live witnesses that he decided
9 to get up and perform for the jury.

10 THE COURT: All right.

11 MR. HILL: We would object to any
12 suggestion it was a performance, judge. Whether
13 or not this man got up and started wandering
14 around was a performance, as the State would
15 believe, or was genuine, that's what the purpose
16 of this particular hearing is on the
17 competency. If the State agreed with the
18 Defense, we wouldn't be having this competency
19 hearing. But I would object to the State
20 characterizing it as a performance. I don't
21 think there is any evidence to show that.

22 THE COURT: Well, I think the record
23 can certainly reflect that we had a panel of
24 forty people in the courtroom yesterday, we voir
25 dired them for approximately three hours, that

1 the court did observe Mr. Eldridge, and during
2 the duration or that time period there was no
3 disruption or distraction. I guess this morning
4 the only thing that Mr. Eldridge has stated to
5 the court that could be interpreted as being a
6 response to an inquiry was some statement about
7 there being so many people or too many people in
8 the room. Obviously, the court is not passing
9 judgment at all on the competency of Mr.
10 Eldridge to understand this hearing or to
11 interpret his actions as being a reflection of
12 his competency. The court order is nothing more
13 than the court's opinion that Mr. Eldridge is
14 unable or unwilling to sit in this courtroom
15 without disrupting or distracting the jury.
16 Therefore, the court has ordered Mr. Eldridge to
17 be removed. If at anytime it is brought to the
18 court's attention that Mr. Eldridge is going to
19 be able to return to the courtroom and sit here
20 and not disrupt or distract the jury, the court
21 will bring Mr. Eldridge back into the courtroom.

22 MS. CRAWFORD: That was going to be my
23 inquiry, Your Honor. If at some point, he goes
24 back into the holdover and is maintaining some
25 level of composure, if the court will consider

1 allowing him to come back into the courtroom.

2 THE COURT: No problem. I also want
3 each side to know, when we bring the jury in,
4 I'm going to inform the jury that Mr. Eldridge
5 is not present and that the court has ordered
6 Mr. Eldridge to be removed from the courtroom
7 because the court is not going to allow there to
8 be any disruption or distraction from the
9 trial. That's going to be it. And for them not
10 to interpret -- well--

11 MS. CRAWFORD: Can you not just say
12 anything?

13 THE COURT: I better just stop there.
14 Yeah, you can go, bring them in.
15 (Jury enters the courtroom).

16 THE COURT: You all can be seated.

17 Members of the jury, Mr. Eldridge is
18 not present in the courtroom. I have ordered
19 Mr. Eldridge to be removed because it is my
20 right to have this hearing to proceed without
21 any disruption or distraction, so Mr. Eldridge
22 has been removed on my order from the courtroom.

23 MR. HILL: Please note our objection
24 again, Your Honor.

25 THE COURT: Yes, sir.

1 And, Ms. Crawford, you may continue.

2 MS. CRAWFORD: Thank you, Your Honor.

3 BY MS. CRAWFORD:

4 Q. I believe, Doctor Austin, you were
5 describing the process whereby Mr. Eldridge was
6 examined.

7 A. Yes. I was, for example, trying to
8 administer tests with Mr. Eldridge, and he was
9 not able to understand the directions well
10 enough for me to continue with standard testing
11 procedures, so I had to stop with that and,
12 instead, used other procedures as well as I
13 could, using certain mental status approaches
14 such as asking him to add two plus two and going
15 from there.

16 Q. Stepping back a little bit, Doctor
17 Austin. You indicated you have done this type
18 of work before, that is, the forensic side of
19 your business, and you had the opportunity to
20 examine patients with respect to criminal
21 allegations; is that correct?

22 A. Yes. Also particularly in family
23 law.

24 Q. Okay. And with respect to the
25 criminal cases that you had the occasion to work

1 on, work with, the patients, have you
2 represented, or should I say have you been
3 called upon to do your work exclusively for
4 State's witnesses or State's patients, or should
5 I say for the State, or have you exclusively
6 done your work at the request of the defense
7 counsel in those particular kind of cases?

8 A. Close to even, perhaps a few more
9 times I've testified for the State than for the
10 defense.

11 Q. All right. So there is no question
12 here, you were asked by the defense in this case
13 to examine Mr. Eldridge; is that correct?

14 A. Yes.

15 Q. Okay. Now, you indicated that you
16 were not able to perform or conduct any type of
17 psychological testing on Mr. Eldridge. Could
18 you explain to the jury, first off, I guess,
19 what it was you were attempting to do and why
20 you fell short of that attempt?

21 A. I was attempting to have both the
22 objective tests performed with Mr. Eldridge
23 where he would give specific answers where he
24 could get quantitative or numerical results,
25 plus, personality tests of just require the

1 patient to respond to questions, make a picture
2 story about pictures and so forth. In addition,
3 I was attempting to get some idea of his
4 intellectual functioning, his orientation as to
5 space and time and his ability to compute
6 numbers was a measure of his concentration
7 ability as well as his skill as a way of getting
8 an assessment of his mental and emotional
9 status.

10 Q. And during that proceeding, what did
11 you discover?

12 A. That he had much difficulty
13 understanding communication. He had a more
14 severe auditory comprehensive problem than
15 vision comprehensive problem in that he was
16 able, for example, to add simple numbers if he
17 could see them visually where he couldn't do
18 this in terms of giving an auditory response.
19 There was a breakdown with the auditory sensory
20 modality compared to visual sensory modality,
21 although I'm not sure whether he really
22 understood all of the vocabulary items. One
23 word at a time is easier to comprehend than a
24 sentence, and he was able to complete or
25 understand the meaning of certain simple

1 vocabulary words up to the point of
2 approximately sixty IQ, indicating there was
3 some mental functioning there. He could deal
4 with some simple words at that point. But
5 essentially I was unable to complete a
6 psychological examination of the patient because
7 of my impression he was unable to understand
8 enough to complete the evaluations. He was not
9 mentally competent enough to go through the
10 evaluation.

11 Q. Doctor Austin, you used the term or
12 the phrase auditory modality. Could you perhaps
13 break that down and explain it for the jury so
14 that they perhaps have a better picture?

15 A. This means understanding what you
16 hear, not just hearing it. It's the
17 comprehension, understanding what you hear
18 versus being able to show you understand what
19 you see. It's a visual perception question.

20 Q. And, through your observations, are
21 you saying that in your opinion his ability to
22 understand what he hears, what he heard fell
23 short of his ability to understand what he sees
24 on paper?

25 A. Greater deterioration deficit using

1 auditory means of understanding, that is,
2 verbal, oral language means of understanding
3 versus the written word or the written number
4 ability to understand.

5 Q. Based upon strictly your observation
6 of the patient, Mr. Eldridge in this case, were
7 you able to form any type of opinion?

8 A. Yes.

9 Q. And what was that opinion?

10 A. A preliminary opinion is that his
11 associations were tangential and would be
12 considered loose associations in that they were
13 not relevant to the topic at hand. His
14 emotional pattern would be described as
15 withdrawn or flat. Flat is a word used with
16 persons that are seriously disturbed who don't
17 show on an ongoing basis in between being
18 agitated emotionally, almost a flatness, a
19 detachment, a withdrawn emotionality. Thirdly,
20 his posture and his eye movements were somewhat
21 inappropriate and they lacked what you call
22 contact, that is, he was not making good mental
23 or emotional contact with me throughout the
24 examination, which is one way you measure the
25 severity of an emotional disturbance apart from

1 any test you give, your feeling of connectedness
2 with the patient or the extent the patient is
3 just not with it or with you or able to make an
4 understandable comprehensible contact with you
5 no matter how carefully you try to support the
6 patient as I did in this case.

7 Q. And did you form any other opinions
8 from your observations?

9 A. At that time, it was my opinion that
10 it was not possible to assess this patient and
11 determine from a professional point of view what
12 his diagnosis might or might not be.

13 Q. Did you have an overall impression of
14 the status or state of Mr. Eldridge at the
15 conclusion of your observation of him?

16 A. Yes, I did.

17 Q. What was that, sir?

18 A. It's my conclusion that his mental
19 state is such that he is not able to understand
20 the issues he is charged with or be able to
21 coherently, realistically communicate with his
22 attorney about the issues involved.

23 Q. Was that the extent of your
24 examination of this particular patient?

25 A. Essentially, yes.

1 Q. Did you have the opportunity to make
2 notes or to read the patient's record when he
3 was in the jail, in the medical unit at the
4 jail?

5 A. No, I did not.

6 Q. Have you at any point since then had
7 the opportunity to read those records?

8 A. Yes, I have.

9 Q. And what are some of the items or
10 points that you observed through the records
11 that you read on Mr. Eldridge?

12 A. Overall, the comments made by those
13 that observed him on the -- in the unit, at the
14 mental health unit, when he was there on two
15 different occasions, indicated he was not
16 accessible to psychological testing during that
17 stay. I see no record of any psychological
18 tests being given to the patient or he was able
19 to be evaluated in terms of a complete
20 professional evaluation was one of my findings.

21 Q. Were there any others that you were
22 able to make?

23 A. Yes. Overall there was substantial
24 data to support the position that he is
25 withdrawn, immature to the extent of a

1 decompensated position mentally, which was also
2 described by one of the physicians associates
3 that he was decompensated.

4 Q. What does that mean, decompensation?

5 A. Decompensation implies he has
6 regressed or gone back to a level of functioning
7 where he is not maintaining good contact with
8 reality.

9 Q. When you say regressed, are you
10 implying, or does the term imply that at some
11 point he may have been at a higher level, it's
12 just that at the present time he is considered
13 regressed?

14 A. That's the assumption I made in my
15 evaluation. That was also the exact term used
16 in the medical reports by one of the physician
17 assistants, as well as numerous, maybe ten or
18 twelve instances of the patient suspected of
19 having delusional thoughts, talking to himself,
20 wanting to kill himself, and essentially
21 presenting psychotic symptomatology of
22 inappropriate affect or feelings.

23 Q. You say psychotic symptomatology?

24 A. Yes.

25 Q. Again would you define that, please.

1 A. This was used in MHMR service plan in
2 that he was observed as demonstrating delusions,
3 that is, talking about things that do not have
4 their root in reality, things that have a
5 reality to the patient but don't have a root in
6 actual reality.

7 Q. What is MHMR, Doctor Austin?

8 A. Mental Health, Mental Retardation
9 service plan.

10 Q. Okay. Is that a function that is part
11 of the system?

12 A. As I understand it, yes.

13 Q. Okay. Doctor Austin, you had
14 mentioned that through your observations with
15 Mr. Eldridge the possibility of his IQ being
16 around the sixty range; is that correct?

17 A. It's a possibility, yes.

18 Q. Could you elaborate on that? Explain
19 exactly what level that is.

20 A. A person of IQ of sixty can learn to
21 read and write approximately third or fourth
22 possibly. They can play simple table games.
23 They can do what a child can do between the age
24 of six and eight but are usually not capable of
25 understanding advanced comprehension.

1 Ordinarily that's representative of their true
2 intelligence.

3 Q. Okay. What were some of the other
4 comments from the record, or indications from
5 the records that you were able to observe?

6 A. Simply that his behavior being quiet
7 and seclusive most of the time was consistent
8 with a person that has severe emotional and
9 mental problems.

10 Q. Okay. Let's back up a little bit,
11 Doctor Austin. Could you distinguish for the
12 jury and for us, if you will, the difference
13 between the term competency and/or sanity?

14 A. Yes. Competency has to do with the
15 ability to comprehend and understand the issues
16 you need to deal with so you can deal with them
17 with at least a minimal level of understanding
18 what this is all about. Sanity has to do with
19 the state of the patient as far as being
20 psychotic or not in terms of being out of
21 reality either at a given point in time or as an
22 ongoing chronic condition. So they are two
23 separate issues.

24 Q. And is it true that through your
25 evaluation and observations you limited your

1 issue to that of competency?

2 A. Yes.

3 Q. Were you able to go into any other
4 issues or specifically the issue of sanity?

5 A. I don't feel there is enough data
6 present for me to reach any even beginning
7 conclusions about sanity or not.

8 Q. Do you have any recommendations or
9 ideas that you feel would be appropriate to
10 enable the patient to become intact perhaps
11 where you could make a better study of the issue
12 of sanity with respect to this patient?

13 A. Yes, I do.

14 Q. And what would that be, sir?

15 A. It's my opinion that a trial of
16 anti-psychotic medication such as Haldol or
17 Thorazine has a potential for rendering the
18 patient more accessible to a complete
19 psychological examination.

20 Q. When you reviewed his record, were you
21 able to tell if there was any type of medication
22 that was prescribed and given to him?

23 A. It was not clear. It seems he was on
24 Atavan, which should be useful to reduce
25 anxieties.

1 Q. How is that given?

2 A. It's sometimes injected into the
3 muscular system. If the patient is cooperative,
4 it's given orally.

5 Q. Okay. You have indicated that some
6 form of anti-psychotic medication such as
7 Thorazine might be appropriate. How would you
8 recommend that this drug be given to him?

9 A. In my opinion, to insure cooperation,
10 should be injected.

11 Q. I understand. Doctor Austin, are you
12 familiar with the term decompensation?

13 A. Yes.

14 Q. And I believe you indicated your
15 familiarity with that condition; is that
16 correct?

17 A. Yes.

18 Q. Could you specifically describe that
19 condition again? Could you tell the jury
20 whether in fact it is consistent with your
21 evaluation and opinion with Mr. Eldridge?

22 A. Yes. Decompensation is a term that
23 indicates the patient cannot adequately
24 communicate in understandable ways with
25 significant people he is dealing with. This is

1 what I observed in my examination of Mr.
2 Eldridge directly.

3 Q. Also, Doctor Austin, are you familiar
4 with the term in your field of malingering?

5 A. Yes, I am.

6 Q. Is that a specific term that is used
7 in the diagnosis and observation of patients?

8 A. Yes.

9 Q. What does it mean?

10 A. Malingering means the patient is
11 putting on an act to appear to be something that
12 he is not to serve his own interests.

13 Q. And did you have the opportunity to
14 observe in the records any indications that
15 determined the possibility of malingering in Mr.
16 Eldridge?

17 A. In reviewing the records, that was one
18 of the issues I tried to assess.

19 Q. And were you able to tell, or what
20 would you think would be the possibility of Mr.
21 Eldridge I guess you say putting on an act with
22 respect to his conduct as you observed at this
23 time and in the records?

24 A. Well, I can't deny that there is some
25 likelihood of malingering. The overall data

1 from the medical records supported the stronger
2 likelihood that Mr. Eldridge is more severely
3 disturbed than putting on an act.

4 Q. How would one who is in the profession
5 be able to detect the presence of malingering?

6 A. There are indications based on the
7 fact the patient appears to be acting a part of
8 being sick when they are not, where they're not
9 consistent with your mental health data about
10 emotions, about mental patterns, thought
11 deteriorations, all the kinds of behaviors that
12 go into mental illness. It's very difficult,
13 for example, to put on an act twenty-four hours
14 a day over a number of days and months unless
15 you have extremely high acting ability.

16 Q. And did you try to observe Mr.
17 Eldridge for any of these characteristics?

18 A. As a matter of course I am somewhat
19 cautious in assessing anyone involved in
20 litigation procedures because there is always a
21 possibility of faking in that regard.

22 Q. Oh, yes, you used the phrase
23 tangential in your description of some of the
24 observations you made on Mr. Eldridge. Can you
25 describe that for the jury, please?

1 A. That's where a patient can't seem to
2 connect with the subject, wanders off in terms
3 of talking from his own self direction. It's
4 not connected to the reality what you're talking
5 about.

6 Q. Okay. And you also indicated with
7 respect to his emotions he appeared flat and
8 detached.

9 A. Yes.

10 Q. Is that something that can be faked or
11 acted upon?

12 A. It would be very difficult to fake
13 being emotionally flat.

14 Q. Why do you say that, sir?

15 A. Because it's an absence of emotion
16 rather than an emotion being faked.

17 Q. With respect to the possibility or the
18 probability that this patient is genuinely in a
19 psychotic or psychosis behavior or that he is
20 malingering, do you have a conclusion or an
21 opinion?

22 A. I can't make a definitive judgment
23 about his diagnosis, since he was unable to be
24 tested. From the records, or from my own
25 assessment?

1 Q. Yes, sir?

2 A. I have an opinion based on all the
3 data available to me at this time.

4 Q. Okay, what is that opinion?

5 A. That it's more likely that the patient
6 is disturbed and mentally incompetent than the
7 likelihood that he is faking, acting and
8 malingering.

9 Q. Could you in any case definitely say
10 that a person is or is not malingering? Is that
11 a possibility in any type of case?

12 A. I don't think it's possible to make
13 that conclusion and deny the possibility,
14 however remote, that the person is not
15 malingering.

16 Q. Are you saying, Doctor Austin, or have
17 you made an opinion, that based on any type of
18 criminal responsibility or criminal conduct on
19 the part of the defendant in this case?

20 A. None whatsoever.

21 Q. And basically what are you discussing
22 or making your opinion an issue in respect to
23 what, sir?

24 A. In relation to his mental competency
25 at this time.

1 Q. So we're not talking about excusing
2 criminal responsibility of or defending the
3 criminal responsibility of the defendant in this
4 case; is that correct?

5 A. None whatsoever.

6 Q. And I believe you indicated that in
7 your opinion you can't even evaluate whether or
8 not Mr. Eldridge was sane at the time this
9 offense was committed; is that correct?

10 A. That's correct.

11 Q. Okay. Approximately, you indicated
12 that in the records you observed at least two
13 stays in the mental ward or mental unit of the
14 jail; is that correct?

15 A. Yes.

16 Q. And do you recall how many months, or
17 did you make note of that, that he spent last
18 year in the jail?

19 A. Although --

20 Q. In the medical unit?

21 A. Although I'm not sure of the exact
22 number of months, the records show he was there
23 approximately from one to three, '93, then back
24 in again approximately 10/93 from the notes at
25 that time.